



## OFFICE OF THE DISTRICT ATTORNEY

COUNTY OF VENTURA, STATE OF CALIFORNIA

**GREGORY D. TOTTEN**  
District Attorney

**JANICE L. MAURIZI**  
Chief Assistant District Attorney

**MICHAEL K. FRAWLEY**  
Chief Deputy District Attorney  
Criminal Prosecutions

**W. CHARLES HUGHES**  
Chief Deputy District Attorney  
Administrative Services

**MICHAEL D. SCHWARTZ**  
Special Assistant District Attorney  
Justice Services

**R. MILES WEISS**  
Chief Deputy District Attorney  
Special Prosecutions

**KENNETH A. VALENTINI**  
Chief Investigator  
Bureau of Investigation

August 26, 2013

The Honorable Ellis L. Green  
Mayor, City of Port Hueneme  
250 N. Ventura Road  
Port Hueneme, CA 93041

Re: Brown Act Complaint

Dear Mr. Green:

There have been several recent articles and editorials in the *Ventura County Star* regarding application of the Ralph M. Brown Act (public meeting law) in the City Council's selection and appointment of the City Manager. The editorial of August 2, 2013, "calls upon the Ventura County District Attorney's Office to examine these violations of state law in the course of council members' official duties."

I have treated this editorial as a complaint to our office and have evaluated the issues raised by the *Star*. I have reviewed the available Agendas, Minutes, and relevant portions of the audio recordings for the meetings of July 8, July 15, and August 5, 2013. I have also conducted legal research and have discussed the matter with City Attorney Mark D. Hensley. As discussed below, it is my conclusion that there is no evidence of violation of the Brown Act in these meetings.

The Brown Act permits closed session "to consider the appointment, employment, evaluation of performance, discipline, or dismissal of a public employee." (Gov. Code, § 54957(b)(1).) Closed session discussion of applicants for the position of City Manager on July 8 and 15 comes within that provision. The agendas for these meetings properly noticed closed session items for discussion of employment/appointment of City Manager. The agendas for these meetings also included closed session items for the city to conference with the City Attorney as the city's representative to negotiate the compensation for the City Manager position; closed session for this purpose is authorized by Government Code section 54957.6.

We have no evidence that an actual appointment was made on or before July 15. Instead, it appears from the chronology that the City Attorney was authorized to negotiate terms with one or more potential candidates identified by the City Council. These negotiations were successful, followed by a vote in open session on April 5, 2013, to appoint Cynthia Haas and approve her contract.

The Honorable Ellis L. Green  
August 26, 2013  
Page 2

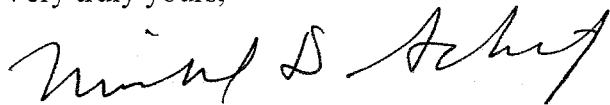
The Brown Act provides, "Action taken to appoint, employ, dismiss, accept the resignation of, or otherwise affect the employment status of a public employee in closed session pursuant to Section 54957 shall be reported at the public meeting during which the closed session is held. Any report required by this paragraph shall identify the title of the position." (Gov. Code, § 54957.1(a)(5).)

This "report out" provision was interpreted by the California Court of Appeal in *Gillespie v. San Francisco Public Library Commission* (1998) 67 Cal.App.4th 1165. The court found that "only a candidate's *actual appointment*, and not a candidate's *nomination*, need to be reported along with the corresponding roll call vote on the day of the action." (*Id.* at p. 1174, italics by the court.) The court stated, "'appoint' must therefore mean the *final* selection of a candidate for public office." (*Ibid.*, italics by the court.) The court further stated, "only actions taken in closed session which *immediately* affect the employment status of a public official are to be reported the same day." (*Id.* at p. 1175, italics by the court.) The court rejected the contention that action taken "with respect to" an appointment must be reported, but found that only action taken "to appoint" the employee be announced. (*Ibid.*)

The factual situation in *Gillespie* was somewhat different than the current case in that it involved a library commission which had only the power to nominate candidates and then forward them to the mayor for final selection. But the principle would be equally applicable here where a city has authorized the City Attorney to offer and negotiate a contract but no contract had yet been accepted or entered.

Because we have no evidence of violation of the Brown Act regarding the meetings discussed above, we are closing this matter at this time.

Very truly yours,



MICHAEL D. SCHWARTZ  
Special Assistant District Attorney

MDS:ck

pc: City Manager Cynthia Haas  
City Attorney Mark D. Hensley  
✓ Teresa Rochester, Ventura County Star